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April 19, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communication Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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BEFORE THE

**Federal Communications Commission**

In the Matter of )

)   
 Amendment of Part 74 of the )   
 Commission Rules with Regard )   
 to the Instructional Television )   
 Fixed Service )   
 )MM Docket No. 93-24**Comments**

The National ITFS Association ("NIA"), through its attorney, hereby files Comments in this proceeding in opposition to the notion of using limited filing windows to control the flow of applications.

**BACKGROUND**

1. NIA is a national association of more than 60 educators located in 26 states and the District of Columbia who are using Instructional Television Fixed Service (ITFS) frequencies to provide educational services to students enrolled in for-credit courses in elementary, secondary, college, post-graduate and career training. They include public, private and parochial schools, community and junior colleges, public and private universities, regional media centers, public broadcasters, state agencies and

and to encourage and assist potential user institutions to develop local or regional instructional networks using ITFS. In addition, the association, through a quarterly newsletter, keeps its members informed as to regulatory and judicial decisions affecting the industry, and presents articles of interest to educators generally involved in "distance learning."

#### USE OF FILING WINDOWS

3. The proposed use of a "filing window" approach to control the flow of applications and make processing more efficient, while every successful in a purely commercial setting, is hopelessly counter-productive in a noncommercial setting, especially one involving educational institutions. Such entities are notoriously slow when it comes to decision making, and worse when it comes to budgeting on a contingency basis. Furthermore, many of them are only partially functional during the summer months.

4. At an educational institution, it is all but impossible to go from the possibility of filing (window announcement) to the filing itself (the window) on notice as short as 60 or 90 days. This, of course, is made much worse if all or part of the notice period is in the summer when 9 or 10 month employees are on extended leave. Initiatives and plans for capital investment must be weighed by facility committees against other uses of the money. The institutional administrative procedures require multiple levels of approval before commitment can be given for a project.

5. Once the approval is gained, one then has to begin the budgeting process which often takes 18 months or more before final authorization. It is only after this has all been completed that the application can be filed.

6. In view of the many alternative uses of each dollar of capital, one would not wish to attempt this process on the hope alone that a window would open at an appropriate time in the future. Such contingencies would be fatal during the approval process.

7. There is also the matter of NTIA/PTFP funding for educational facilities. Without some regularly scheduled window every January (which would defeat the purpose of the window process to begin with) potential ITFS applicant would have to take the risk that a window would open in time for FCC review and approval in time for PTFP funding. A possible alternative would be to have a window in January which would permit only applications 1) with no excess capacity lease and 2) subject to PTFP funding.

8. While one could consider limiting the number of applications filed by any entity at any window, or limiting the total number of applications that any party (including excess capacity lessees) could have on file at the FCC (grandfathering all pending applications in excess of the limit), one can only imagine the creative spirit in the entrepreneurial community when it comes to creating the necessary number of new companies to avoid the limit of the rule.

AN ALTERNATIVE

9. NIA respectfully urges the Commission, should it implement a window filing procedure for ITFS, to exempt from this processing limitation all ITFS applications which do not have an excess capacity lease. Such applicants could be required to certify that they do not have and have not made any commitment to any third party regarding the lease of excess capacity. This alternative procedure would enable educational institutions to move forward with their plans without the uncertainty of the availability of a filing window.

10. Furthermore, with respect to applications filed during a filing window by non-local applicants which also have an excess capacity lease attached, the window should remain open for 60 days to allow for the filing of competing applications by local educational parties so long as they don't have excess capacity leases. This would protect "work in progress" at educational institutions that could be prematurely aborted by a filing in an intervening window occurring too early for the institution to have prepared and filed its application.

11. These limited exceptions to the window process would not materially interfere with the purposes of establishing the process in the first place but would protect and preserve the use of ITFS facilities for those for whom they were originally reserved.

Respectfully submitted,

NATIONAL ITFS ASSOCIATION

By: \_\_\_\_\_

  
Wayne Coy, Jr.

April 19, 1993